IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

W. P. NO.2217 OF 2005

PETITIONER — Surgi Aid Pharmaa, Health Care Equipment, Opposite Collectorate, Town Clock, Hall No.1, 2nd Floor, G. E. Road, Raipur through its Proprietor Krishan Vibhuti Anand, S/o Shri A. K. Anand, aged about 38 years, Tahsil & District Raipur (Chattisgarh)

RECEIVED-COPY 31.5.08 CLERK to A. G. BILASPUR

VERSUS

RESPONDENTS — Guru Ghasidas University Koni, Bilaspur, Through its Registrar, Tahsil & District Bilaspur (Chhattisgarh)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A.F.R.

आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8-8-2005

Mr. Dinesh R.K. Tiwari, counsel for the petitioner.

Nr. Neeraj Choubey, counsel for the respondent.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the propriety and correctness of the decision of the respondent whereby, the respondent refused to accept the tender notice sent by the petitioner by registered post on account of 8 minutes delay in delivery of the said tender by the Post Office.

Brief facts leading to filing of this writ petition are that the respondent issued tender notice on 14-2-2005, which was published in Hindi Dainik Bhaskar on 16-2-2005, inviting tender documents for purchase of medical equipment for the medical college run by the respondent University namely, Chhattisgarh Institute of Medical Sciences, Bilaspur. The petitioner's case is that it is engaged in the business of supply of medical equipments to the Health Department of the Government of Chhattisgarh since last 13 years and earned reputation and good will as a very reputed supplier of medical equipments to the State of Chhattisgarh as also to the State of Madhya Pradesh. Having come across the notice inviting tender, the petitioner rushed to Bilaspur from Raipur to get the tender form on 1st March, 2005 in the afternoon and contacted the Clerk in the Office of the Registrar of the University, and it was informed that complete tender documents are not yet ready and the petitioner should approach after couple of days. After two days, the petitioner again contacted in the Office of the Registrar, and it was told that the petitioner should come on 5th of March, 2005, along with the bank draft prepared to collect the tender documents. The petitioner again contacted on 5th of March, 2005, but on that day also the tender documents

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were not ready, then the petitioner was informed that the documents would be delivered on 7th March, 2005, as the same are under preparation. Ultimately, the petitioner deposited bank draft of Rs.10,000/- and the tender documents were supplied on 7th March, 2005 evening. The petitioner had to take them back to Raipur for completion of necessary formalities and documentation. The petitioner reached to the Head Post Office, Bilaspur on 15th March, 2005 at about 11 O' Clock and he was told that he will have to wait for some time. At about 12.30 p.m. the petitioner was informed that it would not be possible to deliver by 3 p.m. and he was told that there is a Branch of the Post Office at the University campus itself and the petitioner shall rush to that branch. Therefore, the petitioner rushed to the University Branch Post Office at about 1 O' Clock. When he reached there, he found that numbers of other tenderers were also there for submitting their tenders and the concerned person in the Post Office asked the petitioner to come after half-an-hour saying that all the tender documents will be collected by 2.30 p.m. and will be sent to the Registrar's Office. At about 2 O' Clock when the petitioner reached to the said Post Office, he was informed that the concerned person has gone to take lunch and he would be coming after half-an-hour. Finally, when the concerned clerk came at about 2.40 p.m., the petitioner immediately requested him to send the tender documents to the Office of the Registrar so that it is delivered there by 3 p.m. However, the petitioner was surprised to know that his tender has not been considered on the ground that the Post Office delivered it in the Office of the Registrar after few minutes of 3 p.m. Some how or the other, due to the fault of the Post Office i.e. few minutes delay, the petitioner's tender was not considered and that was because of the deliberate attempt made by some of the rivals it was

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shown as having been received after 3 p.m. The petitioner's tender was actually delivered in the Office of the Registrar at 3 p.m. (few minutes before or after 3 p.m.), therefore, it ought to be taken up for consideration. As the tender document itself were supplied on 7-3-2005, there was a little time left for the petitioner to complete the formalities. After having personally met several authorities, when the petitioner found that nothing is being done nor being given any information, the petitioner ultimately sent a representation by registered post on 18-4-2005. When the representation failed to evoke any response, a legal notice prepared by the petitioner through his counsel was sent. Copy of the legal notice is Annexure P-4. The petitioner ultimately prayed to quash the decision taken by the respondent and to issue a writ of mandamus commanding the respondent to take up for consideration by opening the tender submitted by the petitioner and consider the same in accordance with the terms and conditions relating to tender qualifications etc.

Return has been filed on behalf of the respondent in which it has been mentioned that the respondent issued the notice inviting tenders on 14-2-2005 for supply of medical equipments, which could be received from the Office of the respondent against payment of Rs.10,000/- by demand draft drawn in favour of the respondent. It was specifically mentioned in the tender document that the tender documents will be received by the respondent Office only up to 3 p.m. of 15-3-2005. No tender document will be accepted which is received after the specified time. Copy of the tender document is Annexure R-1. On 15-3-2005 tenders were actually received by the respondent till 3 p.m. and entries of the tenders received were made in the receipt register, and entry in the receipt register was closed at 3 p.m. in presence of the tenderers and their representatives who were present there

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and their signatures were obtained on the register. The tender of the petitioner was received after this by the respondent. Since the tender of the petitioner reached the respondent after the time specified in the N.I.T. it was not opened. On 16-3-2005 tenders duly received were opened by the respondent and the tender was awarded to the lowest bidder, and supply order was also issued. For delay in sending the tender, the petitioner himself was responsible because there was ample time between the issuance of NIT and the last date of receipt of the tender, but the petitioner had submitted his tender after the specified time. By not considering the tender of the petitioner, the respondent has not violated any terms and conditions of the NIT and also the rules of the State Government in this regard. Copy of the same is Annexure R-3. The tender forms were available for sale from the respondent's Office and the petitioner came to purchase the tender form only on 7-3-2005. No efforts were made by the petitioner to get the tender form prior to 7-3-2005, as clear from the demand draft by which the petitioner got the tender form. The tender was to be submitted to the respondent's Office till 3 p.m. of 15-3-2005. No tender was to be accepted which is received after the specified time. Also as per Rule 4.6 (5) of the Chhattisgarh State Stores Purchase Rules, 2002, no tender is to be accepted which is received after the time specified. Therefore, by not accepting the tender of the petitioner, the respondent has not violated any terms and conditions of the tender notice. The respondent has conducted the tender proceedings in reasonable and fair manner. It has been prayed that the petition be dismissed.

I have heard learned counsel for the parties.

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The main argument advanced by learned counsel for the petitioner was that on the last date of receipt of tender i.e. 15th March, 2005, the petitioner first of all went to the Head Post Office, Bilaspur, at about 11 a.m. for sending the tender by post, and the Post Office people informed him that there is a Post Office in the campus of the University, therefore, he can go to that Post Office. On hearing this, the petitioner left to the University campus where he reached the Post Office and he saw that numbers of tenderers were standing there. The petitioner was informed to come at about 2 p.m. When he reached there, no person was available and it was informed to him that it is lunchtime, and only at 2.40 p.m. his tender documents were received. The petitioner specifically asked them to send it before 3 p.m. as the time to receive tenders is up to 3 p.m. As the respondent selected the mode of sending tenders by post, therefore, for 8 minutes delay, the petitioner could not have been held responsible because, the Post Office was not the agent of the petitioner. In this connection, learned counsel relied upon the decision of Orissa High Court in the matter of **Dr. Annada Prasad Pattnaik vs. State of Orissa and others** reported in **AIR 1989 Orissa 130**.

On the other hand, learned counsel for the respondent argued that as per the NIT, last date for submission of tender was 15-3-2005 at the Office up to 3 p.m. only through speed/registered post. Since the petitioner's tender was received at 8 minutes past 3 p.m., therefore, the tender could not have been received, as such, it has been rightly rejected, and the said decision of the respondent cannot be said to be arbitrary, irrational or biased. He further submitted that even as per Rule 4.6 (5) of the Chhattisgarh Stores Purchase Rules, 2002, no tender can be accepted which is received after the specified time. He placed reliance on the decision of Delhi High Court reported in **AIR**

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2003 Delhi 474 (Nokia India Pvt. Ltd. vs. Mahanagar Telephone Nigam Ltd.).

Having heard learned counsel for the parties, I have perused the relevant documents. Perusal of the NIT shows that it was made clear to everyone that last date for submission of the tender is 15-3-2005 at Office up to 3 p.m. through speed/registered post. Perusal of the postal receipt Annexure P (Addl.)-1 shows that the petitioner's tender was handed over to the Post Office at 14.55 hours i.e. five minutes before 3 p.m. Copy of the Letter Receipt Register submitted by the respondent shows that the petitioner's tender was received at serial No.645 on 15-3-2005 at 3.08 p.m. Therefore, the case of the respondent is that since it was received late, as such, the tender of the petitioner was not opened.

Now, coming to the question whether the said decision of the respondent in not opening the tender of the petitioner being late by 8 minutes can be considered to be arbitrary, unreasonable or irrational, looking to the facts and circumstances of the case, the respondent being a Government organization in all fairness, is required to take decision in a fair, transparent and reasonable manner. At the same time, the respondent is duty bound to adhere to the rules framed by the authorities. Rule 4.6 (5) of the Chhattisgarh Stores Purchase Rules, 2002, prescribed that no tender is to be accepted which is received after the specified time. In this connection, last time for acceptance of tender was fixed at 3 p.m. It is admitted position that the petitioner's tender reached to the respondent's Office at 8 minutes past 3 p.m. Therefore, it was delayed by 8 minutes and there is nothing on record that the respondent has rejected the said tender with any bias or with mala fide intention. The respondent being a trustee of public confidence and being

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a public servant was required to follow the rules and guidelines scrupulously. It was the matter of award of contract, therefore, the respondent was required to be more careful to adhere to the rules, so that no chance is given to anyone regarding favoritism or relaxation.

In the facts and circumstances of the case, prima facie, in any way, it cannot be said that the respondent had taken a decision in arbitrary or irrational manner. Perusal of the postal receipt submitted by the petitioner itself shows that the petitioner handed over the tender at 2.55 p.m. in the Post Office. It is stated that the Office of the Registrar of the respondent University is around about 2 Kms. away from the Post Office. So, in any manner, it was not expected from the Post Office that within 5 minutes the tender was to be delivered in the Office of the respondent. It is but natural that after receipt of the tender, little bit time was required for handing over the same to some postman for delivering it to the respondent after making entries in their records. Therefore, 13 minutes time, which was taken by the Post Office in delivering the tender to the respondent, cannot be considered to be unreasonable time.

Now, coming to the authority cited by learned counsel for the petitioner, in that case, the petitioner was serving as a Medical Officer in the Primary Health Centre, Kotpad in the district of Koraput, sent an application for taking up the entrance examination for undergoing Two-Year P.G. Course in one of the Government Medical Colleges, and he was required to send the application through post. Accordingly, he posted his application on 27-5-1988 and the post office was located at a distance of 100 yards from the Office of the Convenor, the application sent by registered post was received in the Office of the Convenor on 1-6-1988. His application was treated as not

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to have been received within the time stipulated, i.e., by 30-5-1988. Therefore, in the those circumstances, the Division Bench of Orissa High Court held that the petitioner cannot be held responsible for delay, because in normal course, the application was expected to be delivered by next day or at least within two days, whereas the application was not handed over even within three days, even though the Office of the Convenor was situated at a distance of 100 yards from the Post Office. Hence, on facts, this authority is of no help to the petitioner, because, as has been mentioned above, in the present case, the tender was handed over to the Post Office just 5 minutes before the expiry of time of receipt of tender documents by the respondent.

In the decision cited by learned counsel for the respondent, Nokia India Pvt. Ltd. failed to submit its tender documents within the prescribed time on the ground that the tender documents were in the boxes containing the bids which had to be carried to the 12th floor of the building by climbing the stairs because of the non-availability of the lift. The representation was made by the petitioner before the C.M.D. for condonation of delay. The C.M.D. after going into the cause of delay held that there was no abnormal/ extraordinary circumstance to merit the condonation of delay. Even the C.M.D. was given the discretion that in abnormal and extraordinary circumstance, he was entitled to condone the delay. The Court rejected the objection of the petitioner on the ground that the decision of the C.M.D. by refusing to condone the delay cannot be held to be arbitrary or irrational, as the petitioner was not able to show abnormal or extraordinary circumstance which merits condonation of delay. The Court while exercising the power of judicial review under Article 226 of the Constitution of India held that

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"judicial review cannot be converted into an appeal. Judicial review is not directed against the decision but is confined to the examination of the decision-making process. Where an administrative action is questioned as arbitrary under Article 14 of the Constitution, the role of the Court is confined to "Wednesbury principles". In other words, while examining an administrative decision, what has to be borne in mind is whether the administrative order is rational or reasonable, arrived at after following the principles established by law and by taking into account all the relevant factors and is not manifestly unreasonable that no reasonable authority, entrusted with the power in question, could reasonably have made such a decision. If the decision is within these parameters, the Court cannot substitute its decision for that of the administrative authority".

Therefore, the petitioner has not been able to make out a case that the decision taken by the respondent was in any way arbitrary or irrational or mala fide. Hence, I do not find any merit in this writ petition, same is liable to be dismissed and it is hereby dismissed. There shall be no orders as to costs.

Consequently, M.(W.)P.No.1788/2005, I.A.Nos.6866/2005, 6898/2005 and 6899/2005 stand disposed of.

Sd/-
L.C.Bhadoo
Judge

Soma

(पीछे देखिये)

16.08.05